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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1522

RAMSEY ALEXANDER, *et al.*,

Petitioners,

v.

AERO LODGE NO. 735, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AERO SPACE WORKERS, AFL-CIO, and AVCO CORPORATION, AEROSPACE STRUCTURES DIVISION.

REPLY BRIEF FOR PETITIONERS

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The respondent employer,[1] but not the respondent union, asserts that the district court's finding as to the Globe-Wernicke incident was "an extraneous, non-determinative incident." In fact, however, the district court held the defendants conduct in connection with that incident was a violation of Title VII, Petition, p. 65a, and ordered additional proceedings to calculate the amount of back pay due to the victims of the Globe-Wernicke incident as well as other class members. Petition, p. 82a, n. 2. An evidentiary hearing regarding back pay for the Globe-Wernicke employees was being tried before the district judge in 1977 when the judge's finding of liability was overturned by the Sixth Circuit. In addition, the court of appeals, having concluded that the defendants' conduct in connection with

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[1] Brief for Respondent Avco, pp. 6-7.

Globe-Wernicke was legal regardless of their intent, not only reversed the district court's finding of a violation in that incident but also directed the district court to re-evaluate its other findings of class wide discrimination because the sixth circuit thought them tainted by the district court's finding as to Globe-Wernicke. *Id.*, pp. 105a-106a. The sole reason why the Globe-Wernicke incident is not mentioned in the complaints is that the complaints were filed in 1966 and 1968, but the incident did not occur until 1971-72.

The district court in this action held that the defendants were racially motivated when they decided to provide special training for 73 whites who had worked at the Globe-Wernicke division. The respondents urge in opposition to certiorari, and the court of appeals held, that discriminatory intent is irrelevant under Title VII if the discriminatory policy depends for its success on the application of a bona fide seniority system.[2] Whether Avco's seniority system was in fact bona fide remains an open question. See Petition, p. 119a. But the violation which concerned the district court was not the application of the seniority system, but the intentional act of discrimination which preceded it. Respondents contention, and the decision below, that intentional discrimination is immunized from scrutiny where connected with a seniority system was rejected by this Court in *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747 (1976).

The respondents also deny that they engaged in intentional discrimination; Avco, for example, asserts it was "pure happenstance" that all the beneficiaries of the special training program were white.[3] The district court, however, found that the defendants were racially motivated, and the court of appeals did not question the accuracy of that factual finding. The trial court's findings could not be overturned unless they were clearly erroneous; respondents disagree with those findings, but do not and could not reasonably claim that the findings are without support in the record.

The respondent union,[4] but not the respondent employer, contends petitioners are not proper representatives of the subclass of blacks victimized by the Globe-Wernicke incident. The district court approved plaintiffs as representatives of a class of all "past, present and prospective black employees," Petition 14a, 113a, and the court of appeals upheld this certification. *Id.*, pp. 84a-91a. No opinion of this Court requires that in a Title VII action a class must be divided into subclasses, with separate representatives for each subclass, for each incident of intentional racial discrimination involved.

[2] Brief for Respondent Avco, pp. 7-11; Brief for Respondent Aero Lodge, p. 5.

[3] Brief for Respondent Avco, pp. 7, 10; Brief for Respondent Aero Lodge, p. 3.

[4] Brief for Respondent Aero Lodge, p. 6.

For the foregoing reasons, a writ of certiorari should be issued to review the judgment and opinion of the court of appeals for the Sixth Circuit.

Respectfully submitted,

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